



City of Seattle

## Victim Defendants

### Introduction<sup>1</sup>

Over the past two decades, numerous efforts have been made at the federal, state and local levels to increase safety and justice for domestic violence survivors and criminalize domestic violence. These efforts include domestic violence-related legislation, policies, protocols and training programs, and development of specialized domestic violence units within city and county governments. The King County region is nationally recognized for its many domestic violence-related programs and training projects. In Seattle and King County, Washington, community and criminal justice system-based advocates throughout the region have expressed concerns that an increasing number of domestic violence survivors are being arrested and charged with domestic violence-related crimes. Survivors in this situation are often referred to as “victim-defendants.”

The King County Coalition Against Domestic Violence’s publication, “Victim Defendants: An Emerging Issue in Responding to Domestic Violence in Seattle and the King County Region” (2003), which is also a part of Seattle’s DV Assessment, has contributed to national discussion on the topic of survivors who are also defendants and to growing research on survivors use violence against their battering partners. Some survivors use violence in self-defense, but are inappropriately arrested when the context of self-defense is either not recognized or documented by law enforcement, or who are incorrectly identified as primary aggressors. There are survivors who are arrested because of false accusations by their batterers. Other survivors initiate illegal acts of violence against their battering partners and are appropriately arrested. Those who are convicted are often sentenced to complete batterer intervention programs, which compromise safety and are not appropriate for survivors. There are many negative impacts of arrest and conviction that compromise the safety of survivors.

Recommendations made in the “Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and King County” report take into consideration a review of promising practices compiled from national literature, conversations with researchers and practitioners from other cities and states around the country, as well as discussions with local criminal justice representatives and domestic violence advocates.

Key goals are to ensure that:

- Domestic violence survivors who act in self-defense or who are not primary aggressors are not arrested,
- Charges are not filed or charges are dropped for those who are arrested while acting in self-defense or who were not the primary aggressors in the incident,
- The batterers of those survivors who are defending themselves are held accountable for their threats and/or assaults that resulted in the need for self-defense.
- All victims have access to vigorous and appropriate defense counsel, and supportive community-based advocacy,
- Those who are convicted receive sentences that do not compromise their safety.
- Sanctions acknowledge survivor status and court recommendations consider survivor safety issues.

<sup>1</sup>This material was adapted from the King County Coalition Against Domestic Violence’s publication entitled “Victim-Defendants: An Emerging Issue in Responding to Domestic Violence in Seattle and the King County Region,” prepared by Meg Crager, Merrill Cousin and Tara Hardy



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Recommendations are highlighted below, with a focus on training for all disciplines involved.

1. Leadership should view victim defendants as a significant concern.  
Leaders and policy-makers need to lend their support to a collaborative effort to develop a coordinated response for victim defendant cases. This response would include comprehensive and ongoing training, consideration of arrest, charging and sentencing policies, and changes to existing data systems to improve information flow.
2. Law Enforcement—Law enforcement agencies should be able to give officers the time, training, resources, and support they need to correctly identify the primary aggressor in more complex cases. Practices should include carefully evaluating domestic violence incidents for self-defense, prioritizing accurate identification of the primary aggressor, refraining from making mutual arrests, and using interpreters whenever one or both of the parties do not speak English or have limited English skills.
3. Defense Attorneys—The defense bar should train staff, including investigators and social workers, where applicable, in the dynamics of domestic violence, and support them in acquiring tools for defending domestic violence survivors charged with domestic violence-related and other crimes.
4. Prosecutors—Prosecutors should make domestic violence training mandatory for all staff, including training on evaluating cases for self-defense, screening for victim defendants, evaluating the context of the violence and the history of the parties, and recommending appropriate sentences for survivors with consideration to safety.
5. System-Based Advocates—System based advocates, those advocates who work within the criminal justice system are not permitted to work with defendants in the current case, even if the defendant has been identified as the victim in a previous case. Their role is to advocate for the identified victim in the current criminal case. However, they assist domestic survivors charged with domestic violence-related crimes by flagging possible victim-defendant cases for the prosecutor and consulting with the prosecutor about potential safety concern.
6. Court, Probation and Corrections—Ideally, all judicial officers, court, probation and corrections staff should receive training in the dynamics of domestic violence, the tactics of batterers, and assessing the possibility of domestic violence exists in other types of cases. When the case of a domestic survivor is going to be prosecuted, judges should craft sentences that integrate the safety needs of the individual survivor. In some cases, judges may consider alternatives such as deferred sentences, in which the survivor agrees to complete the conditions of sentence, after which charges are dropped
7. Batterer Intervention Programs—As most court-mandated batterers claim to be “the victim” when they begin a batterer intervention program, staff may reasonably become desensitized to that claim and may have difficulty identifying court-referred domestic violence survivors. Therefore, batterer intervention programs should provide training for their staff in victim defendant issues. For those court-mandated clients who are domestic violence survivors and not batterers, staff should clearly document to the court, with the survivor’s permission, that the individual is not a candidate for batterer intervention, as she or he is a domestic violence survivor.
8. Community-Based Advocacy Programs—Community-based agencies should develop and integrate comprehensive responses to domestic violence survivors who are charged with domestic violence-related crimes. Some areas to address include:



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- Acknowledging in support group and individual work that many domestic violence survivors use violence. Engage in an open conversation about survivors' use of violence, its impacts, and alternatives.
- Providing information to survivors about the criminal justice system and the potential consequences of arrest.
- Increasing opportunities for early contact with victim-defendants through relationships with local law enforcement and the jail.
- Collaborating with defense attorneys on the defense of domestic violence survivors.

In addition, the domestic violence advocacy community should develop some consensus on what mandatory conditions of sentence are appropriate for domestic violence survivors who have committed domestic violence related crimes. Once this consensus is reached, community leaders should work with prosecutors, defenders, and the court to ensure that domestic violence survivors are being sentenced appropriately.

The following reflects recent accomplishments in the work on this issue; many of these activities were guided by the victim defendant assessment report:

- Training for criminal justice practitioners by Gael Strack on identifying primary aggressor (Dec. 2002).
- A four part training series for advocates on working with women who use violence (July and August 2004).
- Training for defenders by a defense law professor from Tulane Law School on victim defendants (September, '04).
- Brochure for jail personnel to disseminate to women arrested for domestic violence.
- Recommendations to judges regarding consequences and recommendations in sentencing survivors contained in a paper, "Some Issues to Consider when Domestic Violence Survivors are Charged with Domestic Violence Related Crimes."
- Presentations about the report findings and recommendations to numerous criminal justice and advocate networking agencies.
- SPD mandatory DV best practice training with primary aggressor (victim defendant) module.
- Participation by the Seattle City Attorney's Office in the National Prosecution focus group sponsored by the National Clearinghouse for Battered Women.
- Seattle Municipal Court and City Attorney's Office established a working relationship with Giving Real Options to Women (GROW), an organization educating women incarcerated at King County jail; women most likely are jailed for charges other than domestic violence, but their history points to domestic violence related situations.

**Cross Reference of Other Strategic Issues:** Batterer's Intervention, Sanctions, Investigations, and Advocacy and Victim Services